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**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
DALLAS DIVISION**

DONALD FLEWELLYN,

Civil Action No.:

Plaintiff,

COMPLAINT AND DEMAND FOR JURY TRIAL

MACY'S/DEPARTMENT STORES NATIONAL BANK

(Unlawful Debt Collection Practices)

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, Donald Flewellyn (“Plaintiff”), through his attorneys, alleges the following against Defendant, Macy’s/Department Stores National Bank. (“Defendant”):

INTRODUCTION

1. Count I of Plaintiff's Complaint is based upon the Telephone Consumer Protection Act ("TCPA"), 47 U.S.C. § 227. The TCPA is a federal statute that broadly regulates the use of automated telephone equipment. Among

1 other things, the TCPA prohibits certain unsolicited marketing calls,
2 restricts the use of automatic dialers or prerecorded messages, and
3 delegates rulemaking authority to the Federal Communications
4 Commission (“FCC”).
5

- 6 2. Count II of Plaintiff’s Complaint is based upon Texas Fair Debt Collection
7 Practices Act (“TFDCPA”), TEX. FIN. CODE 392, which prohibits debt
8 collectors from engaging in abusive, deceptive and unfair practices in
9 connection with the collection of consumer debts.
10

11 **JURISDICTION AND VENUE**

- 12 3. Plaintiff resides in the State of Texas, and therefore, personal jurisdiction is
13 established.
14 4. Jurisdiction of this court arises under 47 U.S.C. § 227 et seq. and 28 U.S.C.
15 1331.
16 5. Venue is proper pursuant to 28 U.S.C. 1391(b)(2).
17

18 **PARTIES**
19

- 20 6. Plaintiff is a natural person residing in Midlothian, Ellis County, Texas.
21 7. Plaintiff is a consumer as defined by the TFDCPA, TEX. FIN. CODE
22 392.001(1).
23 8. Defendant is a “debt collector” as defined by the TFDCPA, TEX. FIN.
24 CODE 392.001(6).
25

9. Defendant acted through its agents, employees, officers, members, directors, heirs, successors, assigns, principals, trustees, sureties, subrogees, representatives, and insurers.

FACTUAL ALLEGATIONS

10. Defendant is attempting to collect a debt from Plaintiff.

11. In or around March 7, 2017, Defendant began placing calls to Plaintiff's cellular telephone number (214) 681-1294 in an attempt to collect an alleged debt.

12. The cellular telephone is a work phone provided by Mr. Flewellyn's employer.

13. Mr. Flewellyn has complete control over the cellular telephone and maintains possession of the cellular telephone while he is at work and home.

14. A number of the incoming calls came from 513-754-9863, 513-573-8717,
513-754-9822, 513-573-8031, 513-754-9822, 513-573-7975, 513-552-7378
and 513-573-8028; upon information and belief, these numbers are owned
or operated by Defendant.

15. On or about April 9, 2017 at 2:51 p.m., Mr. Flewellyn answered a call from Defendant, on his cellular telephone, originating from 513-552-7378.

1 Plaintiff heard a pause before the representative began to speak, indicating
2 the use of an Automated Telephone Dialing System.

3 16. Plaintiff spoke with a representative of Defendants and was informed that it
4 was attempting to collect a debt. During the call, Mr. Flewellyn asked for
5 calls to his cell phone to cease.
6

7 17. Despite Plaintiff having unequivocally revoking consent to be contacted,
8 Defendant continued to call Plaintiff on his cellular phone.
9

10 18. On April 10, 2017 at 7:56 p.m., Mr. Flewellyn answered a second call from
11 Defendant, on his cellular telephone, originating from 513-573-8031.
12 Plaintiff heard a pause before the representative began to speak, indicating
13 the use of an Automated Telephone Dialing System.
14

15 19. Plaintiff spoke with a representative of Defendants and was informed that it
16 was attempting to collect a debt. During the call, Mr. Flewellyn asked for
17 calls to his cell phone to cease.
18

19 20. Despite his second request, Defendant continued to call Plaintiff's cellular
20 phone.
21

22 21. Between April 7, 2017 and May 6, 2017, Mr. Flewellyn was called no less
23 than ninety-one (91) times after having unequivocally revoked consent to
24 be contacted on his cellular phone.
25

22. Defendant would call Plaintiff on his cellular telephone five (5) to six (6) times a day.

23. Most of the incessant calls placed by Defendant were made while Mr. Flewellyn was at work.

24. While at work, Mr. Flewellyn must keep the phone in his possession at all times, which made the harassing calls disruptive to his work day and limited his ability to effectively perform his duties as a regional facilities administrator.

25. As a result of Defendant's conduct, Plaintiff has sustained actual damages including but not limited to, emotional and mental pain and anguish.

COUNT I
(Violations of the TCPA, 47 U.S.C. § 227)

26. Plaintiff incorporates by reference all of the above paragraphs of this Complaint as though fully stated herein.

27. Defendant violated the TCPA. Defendant's violations include, but are not limited to the following:

a. Within four years prior to the filing of this action, on multiple occasions, Defendant violated TCPA 47 U.S.C. § 227 (b)(1)(A)(iii) which states in pertinent part, “It shall be unlawful for any person within the United States . . . to make any call (other than a call made for emergency purposes or made with the prior express

1 consent of the called party) using any automatic telephone dialing
2 system or an artificial or prerecorded voice — to any telephone
3 number assigned to a . . . cellular telephone service . . . or any
4 service for which the called party is charged for the call.
5

6 b. Within four years prior to the filing of this action, on multiple
7 occasions Defendant willfully and/or knowingly contacted Plaintiff
8 at Plaintiff's cellular telephone using an artificial prerecorded voice
9 or an automatic telephone dialing system and as such, Defendant
10 knowingly and/or willfully violated the TCPA.
11

12 As a result of Defendant's violations of 47 U.S.C. § 227, Plaintiff is
13 entitled to an award of five hundred dollars (\$500.00) in statutory damages,
14 for each and every violation, pursuant to 47 U.S.C. § 227(b)(3)(B). If the
15 Court finds that Defendant knowingly and/or willfully violated the TCPA,
16 Plaintiff is entitled to an award of one thousand five hundred dollars
17 (\$1,500.00), for each and every violation pursuant to 47 U.S.C. §
18 227(b)(3)(B) and 47 U.S.C. § 227(b)(3)(C).
19
20

21 **COUNT II**
22 **(Violations of the Texas Fair Debt Collection Practices Act,**
23 **TEX. FIN. CODE 392)**

24 29. Plaintiff incorporates herein by reference all of the above paragraphs of this
25 complaint as though fully set forth herein at length.

1 30. Defendant violated the TFDCPA. Defendant's violations include, but are
2 not limited to, the following:

- 3 a. Defendant violated TEX. FIN. CODE 392.302(4) by causing a
4 telephone to ring repeatedly or continuously to annoy the person
5 called; and
6
- 7 b. Defendant violated TEX. FIN. CODE 392.302(2) by communicating,
8 by telephone or in person, with the debtor with such frequency as to
9 be unreasonable and to constitute a harassment to the debtor under
10 the circumstances; and
11
- 12 c. Defendant violated TEX. FIN. CODE 392.303 by collecting or
13 attempting to collect a consumer debt without complying with the
14 provisions of Sections 1692b to 1692j, inclusive, of . . . Title 15 of
15 the United States Code (Fair Debt Collection Practices Act).
16
- 17 i. Defendant violated TEX. FIN. CODE 392.303 by violating 15
18 U.S.C. § 1692d by engaging in conduct, the natural
19 consequence of which is to harass, oppress or abuse any
20 person in connection with the collection of the alleged debt;
21 and
22
- 23
- 24
- 25

- 1 ii. Defendant violated TEX. FIN. CODE 392.303 by violating 15
2 U.S.C. § 1692d(5) by causing Plaintiff's phone to ring or
3 engaging Plaintiff in telephone conversations repeatedly;
- 4 iii. Defendant violated TEX. FIN. CODE 392.303 by violating 15
5 U.S.C. § 1692f by using unfair or unconscionable means in
6 connection with the collection of an alleged debt; and
7 iv. Defendant violated TEX. FIN. CODE 392.303 by violating 15
8 U.S.C. § 1692c(a)(1) by communicating with the consumer
9 at any unusual time or place known to be inconvenient to the
10 consumer. In the absence of knowledge of circumstances to
11 the contrary, a debt collector shall assume that the convenient
12 time for communicating with a consumer is after 8 o'clock
13 antemeridian and before 9 o'clock postmeridian, local time at
14 the consumer's location.

18 31. Defendant's acts, as described above, were done intentionally with the
19 purpose of coercing Plaintiff to pay the alleged debt.

21 32. As a result of the foregoing violations of the TFDCPA, Defendant is liable
22 to Plaintiff for declaratory judgment that Defendant's conduct violated the
23 TFDCPA, actual damages, statutory damages, and attorneys' fees and
24 costs.

1 **WHEREFORE**, Plaintiff, Donald Flewellyn, respectfully requests
2 judgment be entered against Defendant, Macy's/Department Stores National
3 Bank, for the following:

- 4 A. Injunctive relief pursuant to the Texas Fair Debt Collection Practices Act,
5 TEX. FIN. CODE 392.403(1);
6
7 B. Actual damages pursuant to the Texas Fair Debt Collection Practices Act,
8 TEX. FIN. CODE 392.403(2);
9
10 C. Costs and reasonable attorneys' fees pursuant to the Texas Fair Debt
11 Collection Practices Act, TEX. FIN. CODE 392.403(2)(b);
12
13 D. No less than \$100.00 per violation of this chapter pursuant to the Texas
14 Fair Debt Collection Practices Act, TEX. FIN. CODE 392.403(2)(b); and
15
16 E. Any other relief that this Honorable Court deems appropriate.

17
18 RESPECTFULLY SUBMITTED,

19 Dated: August 14, 2017

By: /s/ Stuart M. Price

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